

**United States Department of Labor
Employees' Compensation Appeals Board**

F.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NY, Employer**

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**Docket No. 13-40
Issued: May 7, 2013**

Appearances:

Thomas R. Uliase, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 5, 2012 appellant, through his attorney, filed a timely appeal of a June 27, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a back injury on April 25, 2011.

On appeal counsel argues that appellant has submitted sufficient evidence to establish a work-related aggravation of his low back condition on April 25, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 2, 2011 appellant, then a 57-year-old electronic technician, maintenance, filed a traumatic injury claim alleging on April 25, 2011 that he bent over to unlock a mail processing machine and ruptured discs in his back. He received an authorization for medical treatment from the employing establishment on April 25, 2011 due to his complaint of a sharp pain in the left side of his back near his kidney. Appellant submitted a note dated April 28, 2011 from Dr. Michael C. Russonella, an osteopath, diagnosing lumbar strain and spinal stenosis.

OWCP requested additional factual medical evidence in support of appellant's claim on May 5, 2011. Appellant resubmitted the medical evidence of record including physical therapy notes. In an April 25, 2011 report, Dr. Russonella stated that appellant had a work-related injury on April 25, 2011. He diagnosed low back pain syndrome, right lower extremity radiculopathy and multiple level spondylolysis with facet hypertrophy. On April 28, 2011 Dr. Russonella again opined that appellant had low back pain syndrome with multiple levels of spondylolysis as well as facet hypertrophy and spinal stenosis.

The employing establishment controverted appellant's claim on May 17, 2011. It argued that he could not have sustained a back injury on April 25, 2011 as he merely bent over to unlock a lock. The employing establishment noted that appellant was not straining to lift and stated that his degenerative disease should not have resulted from one physical action.

On May 23, 2011 Dr. Russonella noted that appellant reported injuring himself at work on April 25, 2011. He stated that appellant reported lifting something heavy at work and that he aggravated his low back. Dr. Russonella opined that appellant sustained a work-related injury. He noted that appellant had a January 2011 slip and fall from which he had recovered with no disability.

By decision dated June 7, 2011, OWCP denied appellant's claim for a traumatic injury finding that he had not submitted medical evidence based on a proper history of injury establishing that he sustained an injury due to his accepted employment incident of bending over to release a lock. Counsel requested an oral hearing, before an OWCP hearing representative, on June 28, 2011.

Appellant submitted a form report from Dr. Russonella dated June 14, 2011 indicating with a checkmark "yes" that appellant aggravated his low back when lifting a heavy item. He submitted a narrative statement dated September 22, 2011 alleging that his injury was the result of several repetitive motion activities including moving and carrying mail equipment and a maintenance toolbox during the two hours immediately prior to his back pain. On November 21, 1997 Dr. Bernard P. Newman, III, a Board-certified orthopedic surgeon, completed a note which stated in its entirety that appellant sustained a lower back injury at work on October 1, 1997 and was feeling better on that date.

Dr. Mark A.P. Filippone, a physician Board-certified in physical medicine and rehabilitation, reported on October 5, 2011 that he reviewed appellant's statement dated June 24, 2011 and diagnosed low back derangement with clear evidence of internal derangement of the lumbar spine and obvious evidence of cervical radiculitis. He stated that the injury on April 25,

2011 was the culmination of all of appellant's back injuries as it was "quite literally the straw that broke the camel's back, as the saying goes, not to imply that [appellant] is a camel."

Appellant testified at the oral hearing on October 11, 2011. He stated that he sustained employment-related back injuries in 1974, 1984 and 1997. Appellant was also injured in a nonemployment-related motor vehicle accident in 1994. He stated that he returned to full duty after each of these injuries. In January 2011, appellant fell outside a library and injured his back. He stated that his duties included cleaning postal machines. This task involved moving a tool case weighing 40 pounds as well as a separate toolbox weighing 200 pounds, a tool bag weighing 25 pounds, rolling a vacuum cleaner weighing 20 pounds and moving the letter equipment from around and atop the machine. Appellant stated that the letter equipment included carts weighing between 400 and 550 pounds which had to be pushed away from the machine. He stated that his back pain occurred after completing two of the four machines assigned to him while releasing a maintenance lock on the circuit breaker. Appellant stated that he pulled the circuit breaker and stood up. He experienced pain in his back and then a few minutes later numbness going down his right leg.

By decision dated November 23, 2011, the hearing representative denied appellant's claim finding that he failed to submit sufficient medical opinion evidence based on a proper history of injury to establish a causal relationship between appellant's diagnosed back condition and his employment incident of April 25, 2011.

Counsel requested reconsideration on December 5, 2011. In a statement dated June 24, 2011, appellant described his prior back injuries including the slip and fall on January 28, 2011. He stated that he returned to work on February 17, 2011 and performed his full duties. Appellant stated on April 25, 2011 at 3:00 p.m. that he reported for duty and was required to perform a daily maintenance route on mail processing equipment machines by 6:00 p.m. He stated that he had to remove all items from around the machines including mail equipment, letter containers, trays and any other items. Appellant then assembled all the assigned tools in the area including a vacuum cleaner, toolbox and replacement machine parts. He then performed the maintenance including vacuuming while working in a crouched or kneeling position and reaching into the machine. Appellant wiped down the machine with cleaning solution and removed any damaged or worn components. He then removed his tools, removed the maintenance lock, restored power to the machine and started the machine. Appellant removed his tools and repeated the process. He stated that after he completed the assigned tasks on the second machine at 6:00 p.m. and was in the process of removing the maintenance lock he stood up and immediately felt severe pain in his lower back. Appellant rested for a few minutes and then felt a numbing sensation down his right leg.

By decision dated June 27, 2012, OWCP denied modification of its prior decision finding that the medical reports did not provide a consistent mechanism of injury and are insufficient to establish that the employment injury occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁷

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁸ Medical rationale includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.⁹

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ 20 C.F.R. § 10.5(ee).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *J.Z.*, 58 ECAB 529 (2007).

⁸ *T.F.*, 58 ECAB 128 (2006).

⁹ *A.D.*, 58 ECAB 149 (2006).

ANALYSIS

Appellant alleged that he sustained a back injury on April 25, 2011 in the performance of duty. He alleged that his injury occurred after completing the maintenance on two machines including moving heavy mail equipment, tools and parts. Appellant stated that he experienced back pain after he arose after bending to remove a maintenance lock from the second machine. OWCP has accepted appellant's description of the events which resulted in the employment injury. On November 21, 1997 Dr. Newman stated that appellant sustained a lower back injury at work on October 1, 1997. Appellant also received diagnoses of low back syndrome, right lower extremity radiculopathy and multiple level spondylolysis with facet hypertrophy from Drs. Russonella and Filippone. These physicians have attributed appellant's diagnosed conditions to his employment activities on April 25, 2011.

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that his employment activities on April 25, 2011 resulted in his diagnosed conditions. Dr. Newman did not provide a specific diagnosis, history of injury or rationale. Without further medical findings and factual details, his report is not sufficient to meet appellant's burden of proof. Dr. Russonella attributed appellant's back condition to lifting a heavy object. This report does not address appellant's detailed mechanism of injury and is therefore not sufficient to establish a causal relationship between his condition and his employment activities.

Dr. Filippone stated that he had reviewed appellant's history of back injuries as well as his description of employment activities on April 25, 2011. He diagnosed low back derangement. Dr. Filippone stated that appellant's current condition was as a result of the culmination of his previous back injuries. He opined that the April 25, 2011 injury was "the straw that broke the camel's back." The Board finds that this report does not provide the necessary medical explanation of how appellant's work activities that day caused or contributed to his diagnosed condition. Without medical reasoning, this report is not sufficient to meet his burden of proof. Dr. Filippone did not explain how or why appellant's work activities that day resulted in his diagnosed condition. Due to the deficiencies in the medical evidence, appellant has failed to meet his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted the necessary medical evidence to establish a causal relationship between his diagnosed back conditions and his accepted employment activities on April 25, 2011.

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board